Supreme Court, U. S.
FILED
JAN 26 1976
MICHAEL RODAK, JR., CLERK

No. 74-1254

In the Supreme Court of the United States

OCTOBER TERM, 1975

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL., PETITIONERS

v.

MOBIL OIL CORPORATION, MARINE TRANSPORTATION DEPARTMENT, GULF-EAST COAST OPERATIONS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board.
Washington, D.C. 20570.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL., PETITIONERS

v.

MOBIL OIL CORPORATION, MARINE TRANSPORTATION DEPARTMENT, GULF-EAST COAST OPERATIONS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

In our earlier brief we argued that employees whose jobsite is the high seas are not subject to the right-to-work laws of any State. Respondent correctly points out (Br. 4, n. 5, 29) that its employees work aboard ship within the territorial waters of Texas during pilotage and unloading and loading operations.[1] To be sure, to that degree, the employees perform "some" work within the State of Texas. That work, however, is not sufficient to make Texas the jobsite of the seamen.

---

[1]For example, approximately 6 hours, each way, are spent in pilotage to and from the port of Beaumont, and an average of 18 hours are spent in that port (App. 117-118).

Every voyage has a beginning and an end. The work performed at either end may properly be viewed as merely incidental to the voyage, which, in this case, occurs on the high seas.[2] Moreover, a comparable amount of work time is devoted to pilotage, loading and unloading within the territorial waters of New York and other east coast States (App. 114, 119). To permit the time spent in Texas waters for pilotage, loading and unloading to serve as the foundation for application of the Texas right-to-work laws would allow Texas to override the judgments of New York and other east coast States, which have an equivalent interest in applying their policies to the seamen here involved, and which have concluded that union security clauses should be permitted.[3]

---

[2]The district court found that (Pet. App. 7d):

> Substantially all of the employees' work time is spent aboard Plaintiff's tankers, and such vessels are located on the high seas or in ports other than ports located in the State of Texas approximately 80% to 90% of the time, but at any given point in time one of the vessels generally is located in Texas or Texas waters.

This finding does not support respondent's contention (Br. 13) that "[t]he district court found that [the] * * * employees perform 10 to 20 percent of their work in the State of Texas." The employees do not necessarily perform seamen's work during the entire time that their ship is within the State of Texas—they may leave the ship before it reaches Texas or they may be off duty during pilotage, loading and unloading.

Moreover, as Judge Ainsworth observed in dissent (Pet. App. 24a-25a, n. 2), "[i]nformation extracted from vessel logs shows that of the eight tankers operated by the company, five of them making typical trips touching the port of Beaumont for a period of time in May and June 1972 were in that port only 5.5% of the total time. A sixth vessel did not touch the Texas port during that period of time and part of July 1972."

[3]The fact that allotment, vacation, and federal tax withholding checks are written and mailed from Texas does not, as respondent asserts (Br. 30), show that "the Solicitor General has * * * misstated the facts * * * with regard to payments of wages." The record shows that $1,994,000.00 annually, the bulk of the employees' net wages (respondent's figure of $1,117,000.00 is the amount of the allotment checks), is paid on board ship in northern ports (App. 67-68, 124-125, 238). The significance of this is not diminished either because some seamen choose to have part of their pay sent to dependents or because respondent performs the function, mandated by federal law, of withholding tax. monies. The payroll functions to which respondent points indicate that the *Company's* headquarters are in Texas. But, under the Board's test, the location of the Company's headquarters is irrelevant. It is the *employees'* headquarters or jobsite that is controlling. For the same reason, it is irrelevant that more employees may spend nonworking time in Texas than in other States (Pet. App. 15a).

In sum, for the reasons set forth in our earlier brief, the location of the employees' jobsite is controlling for purposes of Section 14(b), and the jobsite of the seamen here is the high seas. Therefore, the Texas right-to-work laws cannot properly be applied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JOHN S. IRVING
General Counsel,
National Labor Relations Board.

JANUARY 1976.